

The New Servicemembers Civil Relief Act

IN December 2003 President George W. Bush signed into law the "Servicemembers Civil Relief Act" (SCRA), a complete revision of the 1940 Soldiers' and Sailors' Civil Relief Act (SSCRA). Shortly afterwards, Bush signed the Veterans Benefits Improvement Act of 2004, which amended the SCRA by adding further rights.

The older SSCRA had been changed through numerous amendments and had undergone many judicial interpretations, causing difficulties in understanding and applying the law. The 2003 legislation both changed the law's name so that it clearly encompasses all of the armed services, and settled many ambiguous provisions while incorporating recent court decisions.

The SCRA legislation covers the many issues confronting service members and their families, and now clearly includes National Guard and Reserve personnel. The 2003 SCRA and its 2004 amendments comprise a large body of law that would require many pages to repeat and explain its changes. Therefore, this article can only skim the surface of the law in all its applications.

National Guard Inclusions

The SCRA continues the December 2002 protections of the SSCRA for National Guard members

called to active duty for 30 days or more when carrying out a contingency mission specified by the president or the secretary of defense.



Contract Protection

Any waiver of benefits of the SCRA must be in a separate written document and in at least 12-point type. (For example, a waiver of SCRA benefit may not be written into the "fine print" of a lease contract. It must be clearly explained in a separate document.)

Interest Rate Caps

The law clarifies the rules on the 6-percent interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6 percent per year must be forgiven. This eliminates the arguments that the excess interest amounts were only to be deferred and paid at a future date. Service members must nevertheless make written requests and include copies of their orders to achieve the reduction in interest rates. And this relief does not apply to interest on debts incurred while on active duty.

Court Proceedings

The SCRA extends a service member's right to stay

Steven Chucala is chief of client services in the Office of the Staff Judge Advocate at Fort Belvoir, Va.

court proceedings, either as the plaintiff or defendant, in civil cases, including administrative hearings that were not included in the old SSCRA. This expansion will treat the increasing number of issues being adjudicated by administrative rather than judicial forums that a service member could not previously delay.

The law also requires a court or administrative hearing to grant at least a 90-day stay if requested by the service member due to his or her inability to attend the proceeding because of military duties. Additional stays can be granted at the discretion of the judge or

hearing official.

It also overcomes the abuse by some courts that took a service member's request for stay of proceedings and declared that the request constituted an

appearance in the suit, denied the request and then went ahead with the court action.

In those cases where a stay is denied, counsel must be appointed to represent the service member in his or her absence. And, in those cases, even the attorney may request a 90-day stay if there is a defense that cannot be presented in the absence of the member or the attorney has been unable to contact the member to determine whether a defense exists.

The law also prohibits a court from making a default judgment without determining if the defendant is in the military service and appointing counsel to defend the service member's rights if appropriate.

Eviction Protection

The new SCRA modifies the eviction-protection section by precluding evictions from premises occupied by service members when the rents due are below a certain level. For 2004, that amount was \$2,465, an increase from the previous \$1,200. The Act provides a formula to calculate the rent ceiling for subsequent years.

Taxation

Under the new law, states are now prohibited from increasing the tax bracket of a nonmilitary spouse who had earned income from adding the service member's military income. The prohibition applies when the inclusion of the service member's income was required by the state for the limited purpose of determining

the nonmilitary spouse's tax bracket but had the added effect of increasing the family's tax burden.

Leases

The 2003 law extended the active duty service member's right to terminate real property leases when he or she is complying with permanent-change-of-station orders or deployment orders of 90 days or more. The 2004 amendment extends the termination right to spouses or dependants who jointly lease with the soldier and defines "orders" as including official orders or any notification, certification or verification from the commander concerning the service member's current or future duties.

The 2003 law also includes the termination of automobile leases entered into prior to active duty or while the service member is on active duty, if the member receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more (Alaska and Hawaii are included as OCONUS). The member must provide a written termination request, a copy of his or her orders, and must return the vehicle within 15 days of delivery of the written termination notice.

Insurance Premiums

Service members may request deferments of certain commercial life-insurance premiums for the period of military service and two years thereafter. If the Department of Veterans Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect and the service member will have two years after the period of military service to repay all premiums and interest.

Other Actions

The SCRA retains the SSCRA section that automatically extends the effectiveness of a service member's power of attorney while the member is listed as missing.

It also guarantees residency and the service member's right to vote in federal, state or local elections, if absent from the jurisdiction due to military orders.

These changes and many others will require a long period of education for civilian courts, administrative boards, agencies, private businesses, attorneys and military members. Your legal-assistance office is your best source for determining your rights with regard to the new SCRA.

